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In the Supreme Court of the United States

October Term, 1972
No. 72-500

D'ARNOLD DAVIS,
Petitioner,

vs.

STATE OF OHIO,
Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION

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To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

OBJECTIONS TO JURISDICTION

There is no substantial federal question involved which would require this Court to review this case.

The trial court found petitioner guilty of contempt in open court. A fine of $500 was imposed and petitioner was sentenced to serve five days in the county jail. The Court of Appeals for Cuyahoga County, Ohio affirmed the finding of contempt and the $500 fine. It suspended the jail sentence. The Supreme Court of Ohio affirmed the finding of contempt and the imposition of the fine.

QUESTION PRESENTED

Respondent submits that the only issue presented at all stages of this case was a factual issue and may be stated:

Does the record in this case contain sufficient facts to support the finding of the trial court that petitioner was guilty of contempt by his conduct in open court in the presence of the court?

STATEMENT OF FACTS

Prior to the incident quoted by petitioner in his brief at pages 4-6, the following incident occurred (R. 2-3):

Cross Examination of GLENDA WILLIS by Mr. Davis:

"Q. It is Mrs. Willis, I gather?

A. Yes, sir.

• • • • •

Q. Mrs. Willis, isn't it a fact that Martin Hughes directed Watkins to get his gun?

A. No.

Q. And isn't it a fact that Billy Watkins spoke up and said he had his gun after he walked away from the site of the argument and up the street?

A. He didn't walk up that street.

Q. He never walked up that street?

A. No farther than from here to here (indicating).

Q. That is what we want the record to show.

Mr. Sullivan: Objection to the remark, your honor.

The Court: Mr. Davis, would you please approach the bench?

Mr. Davis: Yes, your honor.

(The proceedings from this point were at the bench.)

The Court: Mr. Davis, the Court has admonished you on several occasions that it will not stand for extrajudicial statements in the courtroom. If you wish me to embarrass you in front of the jury, I will do so, and if that still does not get through to you, I will find you in contempt of Court. Do you understand that?

Mr. Davis: I heard, your honor.

The Court: Do you understand it?

Mr. Davis: I understand it.

The Court: Thank you.

(The proceedings from this point were in the hearing of the jury.)

Q. How long have you known Mr. Hughes?"

Respondent believes that it is necessary to quote further from the record since we believe that such record refutes petitioner's contentions.

Following the portion of the record quoted by petitioner in his brief the record is: (R. 6-14)

"(The proceedings from this point were had at the bench.)

The Court: Mr. Davis, you will answer to me for contempt of Court on this.

Mr. Davis: Yes, your honor.

The Court: You will show cause as to why you shouldn't be found guilty of contempt of Court.

Mr. Davis: Yes.

The Court: If you will not follow the instructions of the Court, we will not continue this trial—

Mr. Davis: May the record show—

The Court: If you will be quiet while I am talking, you will have this statement at the proper time. I told you that. Go over there and sit down.

Mr. Davis: May the record show that counsel has, from the time of identification of that which has been marked by the prosecutor of State's Exhibit E-1 and E-2 requested the right to examine the document.

The Court: The record has reflected every objection that you have made. Now get over there and sit down.

Mr. Davis: May I conclude my statement, please?

The Court: No. Sit down over there.

Mr. Davis: I would at this time move for a mistrial, and ask that the record reflect that the Court is refusing to permit counsel to make a statement into the record, and that he feels gross error is being committed by permitting the prosecutor to use a statement that has been marked for identification purposes without permitting counsel for the defendants to examine it.

The Court: Will you keep your voice down. This is overruled. Now go over there and sit down.

(The proceedings from this point were in the hearing of the jury.)

Q. Were you asked this question: "Q. Isn't it a fact that Wilson is the only one that could have shot Marty?"

Mr. Davis: Objection.

Q. Were you asked that question?

The Court: Overruled.

A. Perhaps I was.

Q. Perhaps you were. Did you give this answer, "Oh, yes"?

Mr. Davis: May I approach the bench?

A. They were wrestling with the gun.

The Court: Will you sit down, Mr. Davis.

A. They didn't ask for any explanation.

Q. This question is very simple. You understand it, do you not?

Mr. Davis: Objection.

A. Yes, I understand.

The Court: Overruled.

Q. Did you give the answer, "Oh, yes"?

A. I don't remember if I did or not.

Q. This statement was taken on April 5, 1969, at 12:45 p.m.?

A. Yes, sir.

Q. It was taken at your home, wasn't it?

A. Yes, after you had been there twice.

Q. This is four days after this, or three days after this incident of April 5th. Are you saying that your memory is better today, February 19th, than it was on April 5, 1969?

A. When you got three kids, you don't want to be going off to jail, and that's what they said to me.

Q. You were never charged with anything?

A. They said, "We'll take you off to jail if you don't sign a statement," and they did.

Q. You were never charged with any crime?

A. This is what they told me when they came to the house.

Q. Who told you that?

A. The detectives. He was there also.

Q. This detective?

A. Him or the other big one. I know they said it.

Mr. Davis: May the record show that at this point—

The Court: Will you sit down, Mr. Davis. The record may show that the prosecutor has handed you the statement that has been marked State's Exhibit E-1 and E-2.

Mr. Davis: May I approach the bench?

The Court: Will you sit down, please. Is there anything further, Mr. Sullivan?

Mr. Sullivan: Nothing further.

The Court: All right. Do you wish to examine, Mr. Davis?

Mr. Davis: May I have a moment to read this?

The Court: You may.

Mr. Davis: Thank you, your honor.

The Court: Are there any questions of this witness?

Mr. Davis: No questions.

The Court: You may step down.

(Recess)

(The proceeding from this point took place after the jury was admonished by the Court and retired from the jury box.)

The Court: Mr. Davis, will you show me cause why I should not find you in contempt of Court at this time.

Mr. Davis: I would request a hearing on same.

The Court: You are having your hearing right now.

Mr. Davis: I would ask to be heard at length on it with counsel.

The Court: I have asked you at this time to proceed.

Mr. Davis: Your honor, I humbly request the right to be represented by counsel, and, further, for time to properly prepare to answer.

The Court: I am requesting you to go forward at this time, Mr. Davis.

Mr. Davis: May I humbly ask the Court whether or not I am ordered to proceed at this time despite my objection?

The Court: You are indeed.

Mr. Davis: May the record reflect an objection to proceeding at this time?

The Court: It may, and it is overruled.

Mr. Davis: May the record further show that counsel requests—D'Arnold Davis requests the right to be represented by counsel?

The Court: The record has reflected that.

Mr. Davis: Yes, your honor.

The Court: Proceed.

Mr. Davis: Not waiving any of my rights under the Constitution of the State of Ohio or under the Constitution of the United States, and only answering because I am ordered to do so and under compulsion, I will make the following statement:

First, I request the right to consult with counsel and the presiding judge of this honorable court.

Second, I request the right to have the record in this matter now before this Court prepared, so that I may review the contents of the record.

The Court: Mr. D'Arnold, proceed, or do you want me to find you in contempt right now?

Mr. Davis: My name is Davis.

The Court: Mr. Davis.

Mr. Davis: D'Arnold Davis.

The Court: I know what your name is, sir.

Mr. Davis: I would request that this honorable Court address me properly.

The Court: Would you proceed?

Mr. Davis: I am proceeding.

The Court: Very well.

Mr. Davis: I further request the right to consult with counsel.

The Court: You have requested that. It has been overruled. The Court has ordered you to go forward. If you do not, I will find you in contempt without a hearing. I am giving you this opportunity. The contempt was in my presence.

Mr. Davis: If the Court please, first of all, I am involved here in the defense of two persons charged with a serious crime. I understand my responsibility. I am responsible for the legal decisions made in their defense.

I am further pressed with the responsibility of using all of my understanding of the law and all of my efforts in their defense. I have and will continue to do so.

The Court: Is there any reason why you should disobey the rulings of the Court and the orders of the Court?

Mr. Davis: May I further proceed?

The Court: Would you answer my question?

Mr. Davis: I believe that it is my responsibility to object at the proper time.

The Court: And make yourself obnoxious in so doing?

Mr. Davis: I believe it is my responsibility on behalf of the defendants to object at the proper time.

The Court: And make yourself obnoxious in the court room; is that correct, Mr. Davis?

Mr. Davis: Counsel does not consider himself obnoxious.

The Court: The Court has repeatedly told you on previous occasions concerning your conduct. The Court has warned you that you would be found in contempt of Court if you continued such conduct. The Court has attempted to help you in every way possible.

You have made yourself so obnoxious in this court room that it is not becoming a gentleman and a lawyer. You have degraded the legal profession by your antics in this court room.

I therefore find you in contempt of Court, Mr. Davis, and I shall sentence you after this trial is over.

You may be seated.

Mr. Davis: Thank you."

ARGUMENT

Does the record in this case contain sufficient facts to support the finding of the trial court that petitioner was guilty of contempt by his conduct in open court in the presence of the court?

Respondent submits that no useful purpose could be served by restating in other words the facts which appear in the record. It speaks for itself.

The Supreme Court of Ohio found that the record ". . . does show . . . and a constant disregard of the Court's order to sit down, all of which amounted to disrespect for the Court, to disruption of quiet and order,

and to actual interruption of the Court in the conduct of its business." "That such constituted contemptuous conduct we entertain no doubt." (Petitioner's Appendix A-3)

Respondent submits that the concept of "due process of law" was not violated by the facts shown in this record and that petitioner's client, not a party hereto, was not deprived of the "assistance of counsel" and was not deprived of his right to a fair trial.

CONCLUSION

Respondent submits that no question of constitutional dimension is raised by this record which should require this Court to take jurisdiction. Respondent submits that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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